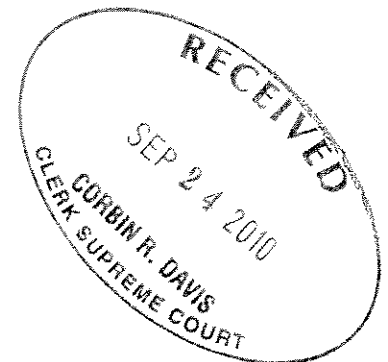


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September 21, 2010

Chief Justice Marilyn Kelly  
Michigan Supreme Court  
P O Box 30052  
Lansing, MI 48909



Re: File No. ADM 2009-19

Dear Chief Justice Kelly:

I write to comment on the proposed amendments to MCR 6.502(H) that would add a one year time limit, and to MCR 7.205(B) that would change the time for a late application for leave to appeal from one year to 56 days. I apologize for the lateness of my letter; I just found out about the proposal this past weekend.

Please do not adopt these proposed changes. Most of the prison population affected by the proposed changes is handicapped by mental health problems, illiteracy, or a lack of resources generally.

In Cain v MDOC, we asked how many men at each security level had been treated for mental illness either before or during incarceration. Here is what we found:

Level	Segregation	General population
6	99%+	99%+
5	99%	86%
4	92%	66%
3-2-1	96%	41%

Low literacy levels are a serious problem. To understand typical Michigan legal materials requires a reading level higher than 12th grade. Hadix v Johnson, 694 F Supp 259, 269 n 7 (ED Mich 1988) rev'd on other grounds Knop v Johnson, 977 F2d 996 (6th Cir. 1992).

Incoming prisoners as well as those in MDOC education programs take the Test of Adult Basic Education ("TABE test"). The TABE test measures reading, math, language, and spelling abilities; the results are reported by grade level. The lowest possible score is zero, the highest is 12.9. Over a ten year period we found that the thousands of prisoners with a high school diploma or GED who took the TABE test in prison averaged less than a ninth grade reading level and less than a seventh grade language level. The TABE language test "measures skills needed to communicate effectively."

In spite of their inability to prepare their own papers, these men are forbidden to receive assistance with their legal work through any MDOC program. In 2006, the MDOC forbade prisoners to help one another with their legal work except for those prisoners eligible for the "Legal Writer" program. The "Legal Writers" assist those without a high school diploma or GED. They receive less than 80 hours of classroom instruction on post-conviction and civil rights law and procedure, and nothing on investigation, during a two to three week class.

For prisoners with an education but without legal skills or the money to hire a lawyer, it is impossible learn how to investigate and prepare post-conviction pleadings within one year. Higher education, including the community college paralegal programs in place when I came to prison nearly 30 years ago, has been eliminated.

Revisions in the MDOC's statewide prison law library policy reduced the books available, and limitations on local prison law libraries handicap those with the ability to do their own work. The list of required books for prison law libraries in MDOC Policy Directive 05.03.115 has been slashed to eliminate, among other things, Michigan Reports and Michigan Appeals Reports prior to 1986; Michigan Court Rules Practice, so there is no annotated Michigan Court Rule book in the law library; all federal court reports prior to 1970; and Shepard's Citations for these older books.

Here at ICF, one law library serves Levels 2 and 5 as well as segregation from a single collection. Books that go to segregation may not come back to the law library. When that happens, it takes months to get them replaced. Sometimes the loss is due to a prisoner refusing to surrender the books, sometimes it is because the guards refuse to go get the books when they are due. In either case, the result is that the books are not available for the rest of us. When I worked in the law library at Marquette in the early 1980s, we had duplicate sets for segregation, but nobody does that any more.

Sometimes personality issues interfere with access. It is not unusual for the law library here to be closed because the staff member assigned to open it on the librarian's day off refuses to open it. Our Gillespie's Michigan Criminal Law & Procedure has not been updated since 2007 because of some issue between our librarian and the vendor.

In 2008, the MDOC doubled the price of photocopies from 5¢ to 10¢ per page, although the cost from the vendor is about 3-1/2¢. That may not sound like much, but the pay for most prison jobs is about \$20 per month.

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The MDOC banned prisoners' purchase of memory typewriters in 2009. PD 04.07.112. Those of us who had them before then can keep them, but others must buy typewriters without memory and type and re-type each pleading letter-by-letter rather than being able to print multiple copies or store a document in memory while editing it.

While legal research and document preparation are difficult in prison, fact investigation is impossible. In the 1990s prisoners were exempted from the benefits of Michigan's Freedom of Information Act. This means that if a prisoner's lawyer did not obtain all the government documents on his case, such as police reports, forensic reports, witness statements, etc., and send them to him, the prisoner can not obtain them unless he or she has someone outside the prison willing and able to fight through all the red tape involved in getting that information from the law enforcement agencies. Finding and interviewing witnesses cannot be done from prison - internet and phone books are prohibited and we are limited to calling a list of 20 phone numbers than can be changed only twice a year.

I understand why prosecutors support the proposed time limitation: they know most prisoners will be unable to meet it, it will lighten the prosecutors' workload, and they have time and budget constraints like everyone else. But without meaningful assistance to help prisoners investigate and research post-conviction issues and prepare and file their motions, the proposed limitation of one-year on motions for relief from judgment is unfair and impractical. It will effectively bar most prisoners from ever seeking relief. Please reject this proposal.

Please let me know if you have any questions or if there is any other information I can provide. Thank you very much.

Very truly yours,

  
Raymond C. Walen, Jr.